

MINUTES
LEGISLATIVE FINANCE COMMITTEE
October 24, 25, 26, 27, and 28, 2005

Representative Luciano “Lucky” Varela, chairman, called the Legislative Finance Committee (LFC) meeting to order on Monday, October 24, 2005, at 1:00 p.m.

The following LFC members were present on October 24:

Representative Luciano “Lucky” Varela, chairman, Senator Ben D. Altamirano for Joseph Fidel, vice chairman, Representatives Nick Salazar, Rhonda King, Jeannette Wallace, Brian Moore, Edward Sandoval for Donald Whitaker, and Henry “Kiki” Saavedra, and Senators John Grubestic for Pete Campos, Phil Griego, Sue Wilson Beffort, Joseph Carraro, and John Smith.

The following LFC members were present on October 25:

Representative Luciano “Lucky” Varela, chairman, Senator Ben D. Altamirano for Joseph Fidel, vice chairman, Representatives Nick Salazar, Rhonda King, Jeannette Wallace, Sandra Townsend, Brian Moore, Edward Sandoval for Donald Whitaker, and Henry “Kiki” Saavedra, and Senators Mary Kay Papan for Timothy Jennings, Phil Griego, Sue Wilson Beffort, Joseph Carraro, John Smith, and Leonard Lee Rawson.

The following LFC members were present on October 26:

Representative Luciano “Lucky” Varela, chairman, Senator Ben D. Altamirano for Joseph Fidel, vice chairman, Representatives Nick Salazar, Rhonda King, Jeannette Wallace, Sandra Townsend, Brian Moore, Edward Sandoval for Donald Whitaker, and Henry “Kiki” Saavedra, and Senators Mary Kay Papan for Timothy Jennings, Phil Griego, Sue Wilson Beffort, Joseph Carraro, John Smith, and Leonard Lee Rawson.

The following LFC members were present on October 27:

Representative Luciano “Lucky” Varela, chairman, Senator Ben D. Altamirano for Joseph Fidel, vice chairman, Representatives Nick Salazar, Rhonda King, Jeannette Wallace, Sandra Townsend, Brian Moore, Edward Sandoval for Donald Whitaker, and Henry “Kiki” Saavedra, and Senators Mary Kay Papan for Timothy Jennings, Phil Griego, Sue Wilson Beffort, Joseph Carraro, John Smith, and Leonard Lee Rawson.

The following LFC members were present on October 28:

Representative Luciano “Lucky” Varela, chairman, Senator Ben D. Altamirano for Joseph Fidel, vice chairman, Representatives Nick Salazar, Rhonda King, Jeannette Wallace, Sandra Townsend, Brian Moore, Edward Sandoval for Donald Whitaker, and Henry “Kiki” Saavedra, and Senators Mary Kay Papan for Timothy Jennings, Phil Griego, Sue Wilson Beffort, Joseph Carraro, and John Smith.

Corrections Department (770) Preview of FY07 Budget Request

Joe R. Williams, secretary, Corrections Department (NMCD) gave a preview of their FY07 budget request. Inmate growth in FY05 was 8.7 percent for the female population and 3.3 percent for the male population. FY07 operating budget request had a general fund increase of \$19.3 million that includes the contingency appropriation of \$750 thousand in FY06. NMCD is also requesting \$6.3 million general fund contingency to fund inmate population growth for FY06 and FY07 (252 males and 48 females).

Expansion request to the base budget are \$754.6 thousand in federal funds to replace various programs, \$162.9 thousand for 4 FTE to operate Camino Nuevo, and no cost to convert 3 term FTE to permanent. Special appropriation requests for FY07 are \$750 thousand for electronic medical record system and \$83.3 thousand for workforce housing development project feasibility study.

Supplemental appropriation request for FY06 are \$1.5 million for 207K labor agreement, \$550.6 thousand for General Service Department insurance premium increases, \$2 million for vacancy rates reduction from 10 percent to 5 percent, \$6 million for inmate population growth and inmate medical contract, and \$1.8 million to operate Camino Nuevo for level 1 and 2 female inmates.

Capital outlay requests for FY07 are \$8 million for statewide facility repairs and equipment, \$8 million for statewide security upgrades, \$350 thousand for statewide security equipment, \$8 million for Southern New Mexico Correctional Facility and Central New Mexico Correctional Facility Slider project, \$9.5 million for Mental Health Treatment Center phase II, \$4.5 million for Roswell DWI Unit phase II, \$257.3 thousand for emergency power generator for Santa Fe Central Office Complex, and \$531.4 thousand for heartbeat detectors.

NMCD staff report they will come in with proposed legislation for the 2006 legislative session. First, NMCD is proposing legislation regarding the Clayton correctional facility. The proposed legislation would authorize NMCD to contract with the Town of Clayton to house inmates in its jail or correctional facility. It would also allow NMCD to contract with Clayton and Clayton to contract with a private vendor not subject to procurement code. Second, NMCD is proposing legislation to authorize worker's compensation benefits to inmates participating in Prison Industry Enhancement programs.

NMCD staff report they have a request for proposals for the operation of Camino Nuevo. NMCD is requesting a supplemental in FY06 to open up the facility as soon as possible.

Senator Wilson-Beffort asked for additional information regarding the Prison Industry Enhancement program. Nick DeAngelo, chief counsel for NMCD, reported to the senator that the proposed legislation regarding the Prison Industry Enhancement program is to bring private industries to the correctional facilities. He also stated the private companies will pay wages to industry standards with the prevailing wage based on the industry.

Senator Smith asked Secretary Williams, in light of the overcrowding and the Clayton correctional facility not being projected to be done until FY08, how the Corrections Department plans on handling overcrowding at the correctional facilities? Secretary Williams reported the department is looking at a combination of things from managing the population to out-of-state placement of inmates if needed. He also said they are in the preliminary stages of looking at out of state placement.

Senator Smith asked NMCD's position on using state funds to build the prison in Clayton due to the excess revenue expected in FY07. Secretary Williams stated the executive position was not to build more prisons, but to build more schools. Smith expressed concern over debt service cost of the Clayton prison.

Chairman Varela questioned why NMCD's FY06 budget was not sufficient. He addressed DFA analyst David Martinez in the audience to explain why the Corrections Department was so underfunded in FY06. Mr. Martinez stated he was not prepared to answer the question, but DFA would meet with NMCD and a response will be given to Chairman Varela.

Status Report from the Lottery Authority

Thomas N. Shaheen, executive director, New Mexico Lottery Authority (NMLA), introduced Reta D. Jones, the new board chair. Mr. Shaheen said sales of Powerball tickets so far have been \$14.4 million. \$3 million of that, or 20 percent, becomes lottery scholarship revenue. Powerball changes include capping max increase to award after reaching record high to \$25 million per drawing.

Mr. Shaheen said the financial audit is complete and awaiting approval of the State Auditor and cannot be discussed.

Mr. Shaheen the FY05 actual budget was \$32.23 million, \$2.5 million less than the original budget.

Mr. Shaheen said Powerball sales were the main reason for drop from original budget to the revised budget. The budget anticipated two big run-ups (high value drawings that draw big bets) and they did not materialize in FY05. Other games performed at or better than expected. Sales were \$134.5 million. Net operating income was \$32.2 million.

Powerball is the highest-margin game. It pays out 50 percent while others pay between 57 and 60 percent. When Powerball declines, total revenues go down. Instant sales are projected to go down and gas prices may be to blame.

Gaming expenses like retailer commissions and online vendor fees followed sales projections and so were higher than FY05. The board approved additional advertising expenditures. Note that some of the advertising focuses on the scholarships. Wages and benefits in the operating expenses have increased substantially and the agency anticipates hiring a manager of information systems; security concerns have made it possible to add this position into the budget.

Mr. Shaheen said that U.S. Senator John Kyl from Arizona is preparing to introduce legislation that deals with Internet lotteries but for the first time does not include states' rights language. The main concern is international online lotteries. The World Trade Organization has ruled that the United States can ban Internet lotteries if the ban is for United States games, too, including on-line horse racing.

Chairman Varela asked about Mexico's lottery. Mr. Shaheen said Mexico so far is not part of the Powerball group since they have had some fiduciary problems.

Senator Smith said Think New Mexico has proposed that efficiencies can be achieved so that the revenues don't decline. The Authority should be prepared to answer questions to the finance committees about this.

Senator Smith said tuition increases have eaten up a lot of the revenue. Two universities have moved their fees to tuition and if all universities did that, the fund would be in trouble. We need to find additional revenue sources to fund these scholarships. There needs to be a rule as to what constitutes fees and what constitutes tuition. The subcommittee is meeting on these issues. One of the possibilities is to put a cap on how much a school can benefit from the lottery. Another is that the scholarship covers both fees and tuition. Senator Smith asked for an update of the table in the brief dated March 23, 2005, before the tuition increases came in.

Mr. Abbey, LFC, director, recommended that a letter from the LFC chair be sent to the chair of the Lottery Committee asking them to bring legislative proposals they are considering to the Higher Education Committee and present them at the December hearing.

Chairman Varela asked that Mr. Shaheen prepare a FY07 budget preview for December's hearing.

Public School Insurance Authority (342)

Sammy J. Quintana, director, Public School Insurance Authority (PSIA), said PSIA insures 88 school districts and 56 charter schools statewide. The fund pays up to \$750 thousand for each property claim or liability claim and for each worker's compensation claim before re-insurance pays the balance. The risk fund balance has moved from a negative \$4.3 million in FY04 to a negative \$13.8 million in FY06. The agency projects FY07 risk expenses at \$60 million. The two largest causes for property claims are hail and water damage. In FY05, 25 districts were damaged by hail. Three of those claims were in excess of \$750 thousand. A primary factor in high claims is a result of differed or poor maintenance on buildings. In response to higher claims, the agency is looking at increasing the deductibles school pay for property claims.

Chairman Varela asked that Greg Geisler, LFC analyst, follow up on the coordination of work with the Public Education Department to determine how to address the problem and make certain maintenance is being performed.

Representative King said she was under the impression that Public School Capital Outlay Council was going to work with the public schools and that one of the requirements was to have maintenance plans to make certain that maintenance was being done. Public School Facilities Authority and the Deficiency Corrections Unit should have these requirements in place.

Chairman Varela agreed to follow up to make certain certification of districts be contingent on maintenance plans being in place and being applied.

Mr. Quintana said that liability claims are up, with the highest claims coming from civil rights violations and improper touching of students. The most recent development was a \$3.2 million judgment for a single improper touching incident by a substitute teacher.

Mr. Quintana reviewed ways to implement changes to reduce liability. Change has been needed in how the Educational Department handles teacher licensure to make sure teachers who commit sexual molestation are identified and taken out of schools. Previously the department had a policy that if there was no conviction then there was no suspension or revocation of license. Recently changes seem to be underway to get rid of these teachers. Another is to make sure there are no confidential settlements, so

that other districts will be aware of teachers' behaviors if they move to another district. PSIA is requiring districts make reports to make sure personnel do not move among districts.

Because of increased property and liability claims, the cost of re-insurance to cover claims beyond \$750,000 has increased significantly the past year.

Ms. Christy Edwards, deputy director, Public School Insurance Authority, reviewed the self-insured health benefits program. Ms. Edwards said PSIA is a self-insured entity on the benefits side. Contributions must cover expected claims plus administrative costs. Of the total PSIA budget in FY07 of \$245 million, \$174 million goes to medical claims. The agency is focused on prevention by providing routine physicals, labs and free vaccination program. The top drug indicators are depression, high cholesterol, ulcers and diabetes. The agency promotes a comprehensive health management program by providing a number of services to assist in prevention.

Action taken by the board for a 23 percent rate increase in October 2003 was dramatic but led to changes resulting in a slower increase of claims allowing the revenue versus claims relationship to remain positive.

The impact of the medical premium increases projected for October 2006 is expected to represent an \$18 monthly increase to employees making \$30 thousand.

Employee contribution at status quo costs the employer \$119.7 million. If PSIA adopted the state employee bracket the cost would be \$147.8 million.

Responding to Representative Moore about incentives to change health behavior, Ms. Edwards said employees receive \$20 gift card if the employee completes a health risk assessment.

Responding to Representative Moore's concern about the mail order prescription program that takes the local pharmacies out of the mix, Ms. Edwards said four agencies in the Interagency Benefits Advisory Committee are in the process of developing a proposal to consider allowing 90-day prescription to be dispensed by local pharmacies.

Responding to Senator Smith on premium increases, Ms. Edwards said premiums rose 3 percent this year and are expected to rise 13 percent in FY07. Responding to a Senator Smith on why charter schools in Albuquerque are covered by PSIA when Albuquerque Public Schools is outside of NMPSIA, Mr. Quintana said the enabling act stated that charter schools will be covered by NMPSIA. Changes in the act are being considered to allow Albuquerque Public Schools to join voluntarily.

Senator Beffort commented that the \$30 million cost estimate to increase the employer share of benefit premium for teachers to equal state employees is high. She suggested that the program could be tweaked to cover more of the costs for the lowest salaried employers and raise premiums for the higher salaried employees. Senator Beffort said the employee benefits task force has been looking at this and the committee should schedule the task force chair Representative Lujan to discuss the employee benefits task force with the committee. Chairman Varela asked Mr. Abbey to coordinate a hearing for the next meeting.

Responding to Senator Rawson on the costs of civil rights, discrimination, sexual molestation representation, Mr. Quintana said there is no deductible at the present time; the high costs are because of

litigation and representation costs and settlements or judgments. Senator Rawson would like to see a cost breakdown on claims by district.

Public Regulation Commission (430)

Ben Lujan, chairman, Public Regulation Commission (PRC), said PRC now has more decorum and more stability. He noted only one or two cases are before the Supreme Court and the agency is depending more on enterprise funding and general fund dollars.

Mr. Lujan highlighted several things the commission worked on during the year: the commission held its first natural gas forum in Albuquerque, the Telecom Bureau investigated Qwest on implementation of a alternate regulation agreement and negotiations on a new agreement are ongoing.

Vince Lithgow, budget director, presented the FY07 budget request base amount of \$33.5 million and 270 FTE, expansion amount of \$1.1 million and 17 FTE, and total budget request of \$34.8 million and 287 FTE. PRC requests approximately \$23 million of the total base request for operating expenditures with the remainder of the total request slated for uses from the patients' compensation fund.

Mr. Lithgow reviewed the following programs for base budget requests: the Policy and Regulation request is \$7,922.6 million and 85.7 FTE, Public Safety request is \$4,655.8 million and 48.3 FTE, Program Support request is \$3,377.3 million and 52 FTE, and Insurance Policy request is \$7,045.3 million and 84 FTE.

Mr. Lujan reviewed expansion items that totaled \$1,187.4 million and 17 FTE.

Chairman Varela commented that he hopes PRC will cooperate and work together to stabilize the commission for the benefit of the public.

Chairman Varela said he is concerned about the request of 17 FTE when there is a 13 percent vacancy rate. Chairman Varela suggested that maybe the key positions that were requested as expansion be reclassified in the current system.

Mr. Lithgow said PRC is working on filling the positions.

Chairman Varela said State Fire Marshals Office received a special in the 2004 legislative session to conduct a needs assessment. In response to Chairman Varela's question on the status of the assessment, Mr. Sandefer, state fire marshal, said 161 of 292 fire departments reviewed met fire-safety standards set by the insurance industry. The audit will be completed by mid-December.

In response to Chairman Varela's question about PRC conducting an internal assessment of performance measures and internal accountability, Mr. Lujan said areas of concern are in insurance and collections. There are improvements in Transportation and Utility divisions. Most divisions met targets, including Public Safety. PRC would like to visit with Mr. Abbey and LFC staff to go over how PRC should be measuring accurately.

Chairman Varela asked that Mr. Abbey re-work these measures and bring them to the Legislature and identify measures that are key to the appropriations act.

Mr. Abbey encouraged PRC to produce a quarterly report.

Representative Wallace requested that PRC provide her with a list indicating amounts going to fire districts, both local and volunteer. Representative Wallace requested a list covering several years completed by January so the House Appropriations and Finance Committee can review it.

In response to Chairman Varela's question on what kind of control PRC has over co-ops, PRC staff said state law gives them little authority; co-ops have been unregulated for years. Co-ops are member-owned and members vote for board of directors, who control management.

Chairman Varela said he would like PRC to propose regulation of co-ops.

In response to Senator Rawson's question on who pays into the patient's compensation fund, Mr. Serna said the doctors and hospitals based on a formula. The fund is set up to supplement compensation to injured parties. Senator Rawson requested that he get a copy of the fund.

Tourism Department (418)

Mike Cerletti, secretary, Tourism Department, noted the budget request is essentially flat. The Tourism Department (TD) is asking for budget adjustment authority for use of funds for the Off Highway Vehicle program, which takes effect in January but does not get funded until July. The Scenic Byway Program has been moved from the Transportation Department to the Tourism Department with a joint powers agreement. Federal funds were being used but the program needs additional general funds in FY07.

Tourism has submitted four requests for special appropriations: \$1.7 million for the advertising and marketing and cooperative programs, \$150 thousand to fund a hospitality program, \$100 thousand to fund the 2012 New Mexico centennial, and \$400 thousand in conjunction with the Department of Economic Development X-prize marketing.

The overseas markets are doing very well. The Tourism Department, in conjunction with the city of Albuquerque, will be meeting with the Mexican airline AeroMexico next week in Guadalajara to discuss airline service from Mexico to Albuquerque.

Mr. Cerletti is asking for funding for a new mobile Visitors Information Center that will be used throughout the state for different events like the Balloon Fiesta.

In response to Representative Sandoval's question about how much of the advertising propaganda, like the lapel pins, is produced in the state, Mr. Cerletti said the pins are produced in China because there isn't a factory in New Mexico. The department uses an in-state distributor. New Mexico Magazine and the state vacation guide are not printed in state because of lack of capability in the state.

At the request of Senator Altamirano, Carolyn Cook, chairman of the Santa Fe Airport Advisory Board, said the airport needs to be self supporting; this can only happen with commercial service. Great Lakes has three flights a day to Denver but the airport had 14 flights a day last summer. Great Lakes say they will stop service this winter. Loss of service means loss of a \$1million Federal Aviation Administration grant. To attract commercial service Santa Fe airport must be certified as Class I airport by the FAA. The airport is now a class III. To meet Class I certification, the airport needs fire fighting equipment and

personnel to be able to reach the center of any runway in three minutes or less. Federal funds will pay for infrastructure, fire equipment, and a fire facility. The airport is asking for seed money for personnel from the Legislature. The airport has obtained \$100 thousand from private sources and will get another \$200 thousand if the city annexes the airport. Cost of personnel for one year is \$350 thousand. The airport needs a one-time appropriation. United Express Airlines has sent a letter to the Santa Fe City Council requesting to serve Santa Fe as soon as the airport is upgraded.

In response to Representative Varela's question on the condition of the airport, city staff said that 90 percent of the funds for improvements are coming from FAA.

Representative Varela suggested tourism in Santa Fe is hampered by the lack of air service and asked Mr. Cerletti to get behind this effort and help with \$350 thousand.

In response to Senator Smith's concern about eight unauthorized positions, Josh Rosen of NMTD said the unauthorized positions are due to conversion of terms to perms and unauthorized position created by the governor.

In response to Senator Smith's comment on the statewide marketing effort to be run out of governor's office, Mr. Cerletti said the governor wants to create a unified branding effort. Senator Smith said the effort should be happening within the agency not in the governor's office. Mr. Cerletti said Johnny Montoya will be coordinating with each of the six departments involved and the effort is housed at the Tourism Department, but administratively attached to governor's office. The FTE will not be out of NMTD.

In response to Senator Griego's, Mr. Cerletti said \$100 thousand was appropriated for a joint advertising effort with the State Parks Division and the Cultural Affairs Division. A report was submitted to LFC in September.

In response to Senator Carraro, Mr. Cerletti said the state receives \$4.2 billion in tourism dollars from a budget of \$7.5 million budget, a 7-to-1 return on investment.

State Engineer/Interstate Stream Commission (550)

John D'Antonio Jr., state engineer (SE), reviewed base expansion (\$2,168.9 million, FTE 11.0.) and specials (8,929.0 million, FTE 37.0.). This included conversion of the agency's remaining term positions to permanent.

Representative Varela pointed out the differences in the OSE budgets presented to DFA and that presented to LFC. Mr. Abbey added that LFC did not have a copy of the expansion requests and that presenting budget requests that weren't presented to the committee as required by law on September 1 is problematic.

Representative Varela said he was under the impression that DFA was accepting addendums to the FY07 budget and the information would be shared with LFC. Further, he said the assumption was that OSE was asking for a flat budget and that is the basis that LFC is going to apply. Representative Varela noted that the committee would listen to the presentation but will have to reconcile the numbers with DFA and LFC.

Herman Garcia, OSE administrative services director, indicated OSE submitted the budget with the required format to DFA and LFC, a few days before September 1. Michael Marcelli, OSE's DFA analyst, added that the agency's budget request does not reflect the expansions that Mr. D'Antonio outlined, further that the expansion requests were revised on October 12 and that LFC should have received notice. Representative Varela then said that the committee will go with the flat budget with consideration with expansions.

Mr. D'Antonio then reviewed State Engineer major accomplishments within the last year focusing on the Water Resource Management Initiative and Indian Water Rights settlements. Mr. D'Antonio noted that the Legislature had passed an Indian Water Rights Act that contains a reporting requirement and that settlement of Aamodt, Navajo, and Taos settlements would require \$75 million in state funds.

Regarding resolution of the Pecos River Compact, Senator Smith enquired as to whether the OSE had identified specific properties and acquisition costs to justify an \$18 million FY07 capital request. Mr. D'Antonio advised that owners with an interest in selling to the state and OSE simply needed the appropriation to effect acquisition.

Senator Rawson requested a chart reflecting the funding and agency growth, while Representative Varela requested that the department develop a hiring plan by the session to bring down the 10 percent vacancy rate.

Regulation and Licensing (420)

Arturo Jaramillo, superintendent, Regulation and Licensing Department (RLD), said RLD requests \$15.4 million in general funds for the FY07 budget. Mr. Jaramillo reviewed increases in number of RLD licenses and in the number of security criminal proceedings and convictions.

Representative Varela's questioned who prosecutes for these criminal proceedings. Mr. Jaramillo responded that the Securities Division prosecutes in conjunction with either a district attorney or an attorney general.

Mr. Jaramillo reviewed the 29 boards and commissions attached to the department and funded through licensing fees and other regulatory fees. Six new FTE for business operations specialists were requested to deal with increases in licensees.

Representative Saavedra said he is concerned about the unauthorized positions in the department that take away funds from the regular employees and explained that the situation does not sit well with him and will not sit well with the House Appropriations and Finance Committee during the session.

Representative Varela asked the State Personnel Office representative to explain SPO's policy regarding unauthorized hires contrary to legislative intent.

The SPO representative explained that unauthorized classified temporary positions are administered through the 180-day temp program that works with the emergency appointment application to the Personnel Act as well as to the personnel board rules. The program allows hiring of someone in an emergency situation when there are not qualified applicants immediately available to help, or for a special project or position not meant to be permanent. In the event an additional 180 days is needed, SPO must

approve and the agency must work with its budget analyst at DFA to ensure funding levels exist to absorb the additional expense. The SPO representative asserted that she and Dannette Burch, deputy director at DFA, asked the Human Resources Council to put together a subcommittee to address why agencies continue requesting unauthorized temps. She said some positions are temporary during the hiring process and SPO needs to move back to the original intent for the positions, which was 90 days when no qualified applicants are available.

Representative Varela commented that the system is being abused and that he does not know what the state personnel rules are. He suggested that the committee may want to do an audit on what SPO is doing and recommended that the superintendent needs to look at vacancies and unauthorized positions.

In response to Senator Altamirano's question regarding when the findings of the committee would be ready, the SPO representative stated that she wanted to approach the Personnel Board at their December meeting with initial findings and to have a plan out of the Human Resources Council for identification and approach by March.

Game and Fish Department (516)

Bruce Thompson, director, Game and Fish Department (GFD), reviewed the FY07 budget request of \$33.7 million, and indicated the department was not be requesting any additional FTE. Mr. Thompson added that the department will be focusing primarily on continuing past services, implementing new programs, and, in particular, expanding hunting, fishing and other wildlife associated recreational opportunities. Mr. Thompson then acknowledged the Legislature's sensitivity to the interest and needs of the department in providing an appropriation for the department to achieve a compensation adjustment for department employees.

Responding to Senator Smith about the disposition of the FY06 \$4 million capital appropriation for acquisition of property and habitat improvement, Mr. Thompson replied that the entire appropriation came to the Department of Game and Fish and that the department developed an approach to work in conjunction with the Energy, Minerals and Natural Resources Department, New Mexico Department of Agriculture, Department of Finance and Administration, particularly the Local Governments Division, to identify and direct funding towards projects that will accomplish an entire array of uses identified in the appropriation.

Representative Moore then reflected on the department's vacancy rate, to which Mr. Thompson suggested that seasonal factors influenced the rate, and that it could be from 4.6 percent to as high as 9.5 depending on the time of year. Mr. Thompson added that it was presently some 6.5 percent.

Senator Rawson then questioned Mr. Thompson as to the state's Mexican wolf situation. Mr. Thompson explained that a one-year reintroduction hiatus is called for if six pair of wolves are in the wild. Senator Rawson's then questioned the budget request of \$55 thousand to hire a lobbyist for the department. Mr. Thompson suggested the funds were required to employ an individual to work on specifically approved legislative initiatives from the executive and the State Game Commission.

Responding to Senator Smith about the status of Game Protection Fund, Mr. Thompson said it contained \$9.7 million at the beginning of FY06.

Miscellaneous Business

Informational Items. Mr. Abbey presented the Budget Adjustment Request Report, September Cash Balance Report, LFC Budget Status Report and LFC Audit Work Plan as informational items to the committee.

Educational Assistants Career Ladder

Public comments were made from educational assistants from throughout New Mexico

Secretary Garcia said that when the Legislature mandates raises, it must be given and the Public Education Department does not have control over it. The department will not approve a budget if it does not meet the mandates.

In response to Representative Salazar in regards to is the department establishing a new structure for educational assistants (EA), Mr. Ball, assistant secretary for educator quality, Public Education Department, said the No Child Left Behind Act has new requirements for those EAs who work in Title I programs. PED aligned the licensure system with those requirements two years ago, so that a Level 3 EA meets those standards. The licensure levels are not tied to salary minimums as they are with teachers. Responding to Representative Varela about the department's budget request, Secretary Garcia asked how the committee wanted to proceed with the issues. Representative Varela said to keep in mind limited resources are available.

Senator Griego said the Legislature should establish a budget that limits administrative costs and move more money into the classroom. Senator Smith made a point that the ability to implement expansions is finite and the state needs to make certain we have children who are highly educated. Legislative mandates are questioned by districts as micromanaging yet recommendations are not implemented as intended. Representative Saavedra said that the time has come that initiatives need to stop.

Public School Support (993) Preview of the FY07 Budget Request

Veronica Garcia, secretary, Public Education Department (PED), reviewed the Public School Support (PSS) FY07 budget request. Secretary Garcia said the department will be proposing legislation on charter schools, how they are governed and how they handle finances; ethics and licensure; confidentiality agreements and information sharing with PED; procurement changes regarding assessment; the alignment of federal and state law; and changes to graduation requirements.

Ms. Garcia said 59 percent of the dollars is being spent in the classroom with a goal of 65 percent. Ratios are affected in the rural districts because of the economies of scale. Ancillary personnel are not included in direct instruction but instructional support represents 21.1 percent; operation and maintenance, 12.4 percent; administration statewide, 3 percent; athletics, 1.4 percent; food and transportation, 0.1 percent; and the non-instructional committee, 0.7 percent. The majority of the funds are in direct instruction.

Don Moya said all numbers are preliminary and are subject to change. Final request will be presented on November 30, 2005. Program costs for the FY05-06 base \$2.27 billion. Enrollment growth is budgeted at \$16.5 million based on 5,216 units at the current unit of \$3,265.02, insurance at \$28.8 million with \$2.6 million for the Albuquerque Public Schools (APS). APS does not participate in the state health insurance

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pool, primarily because they get better rates.

Senator Beffort said that APS does not allow open enrollment for four years. This may be a factor in lower costs.

Secretary Garcia said the Public Schools Facilities Authority (PSFA) is responsible for maintenance issues, not PED, although it affects the districts and the department.

Mr. Moya indicated the cost of a 1 percent increase in salaries for all school employees statewide is \$17.8 million. A 5 percent for instructional assistants would cost \$3.7 million.

Secretary Garcia said the executive will ask for expansions for pre-kindergarten, elementary physical education, and elementary school breakfast. She said middle school staffing will become problematic as teachers without content certification will not be able to teach in middle school. NCLB has not been adequately funded and there is about \$36 million funding gap statewide.

Representative Varela said to make sure that projections are long term and to include out-year projections not just for FY07.

Senator Beffort commented that the state-funded pre-kindergarten program has had significant impact on the childcare industry. The per child compensation is \$2 thousand annually; industry cannot sustain efforts at this level.

Bernalillo County Metropolitan Court (244)

Chief Judge Judith Nakamura said the court's overall caseload has increased 42 percent in the last 10 years. DWI constitutes 5.5 percent of total filings. The court is on target for receiving new filings for 136,000 cases in FY06. Nakamura asserted that a decrease in filings during the last few months was due to several police shootings. The Metro Court general fund base budget request is \$19.7 million for FY07, a 6.1 percent increase over the FY06 general fund operating budget. The contractual increase of 6 percent, \$89 thousand, is due to security request for sheriffs. Nakamura explained that one of the reasons for the contractual request was that the number of remands has increased due to increased wanted or drunk individuals in the courtroom. The court is requesting 8 of the 12 FTE documented as needed by the staffing study.

Representative Varela requested an explanation for the request for the budget adjustments request language change. Mr. Saavedra said the BAR language would increase warrant enforcement capabilities and that the authority was requested for both FY06 and FY07.

Nakamura reported that the court is seeking to increase Metro Court judges' salaries to 95 percent of district judges' salaries. The court would like to increase staff salaries to 90 percent compa-ratio and is requesting an additional judgeship.

Representative Varela asked if one of the new judges would be assigned to special caseload and the Ms. Nakamura said that the judge will be assigned criminal cases.

Representative Varela asked if Metro Court salaries would be considered through a separate bill. Ms.

Nakamura said that they would be and that a proposal had been submitted to the Judicial Compensation Commission (created during the 2005 legislative session) for consideration.

Representative Varela asked if a separate bill would be submitted for the 90 percent compa-ratio initiative. Marc Saavedra, court administrator, responded that it would, as part of judicial bill for all judicial employees similar to last years request which resulted in funding for only the magistrate clerks.

Representative Varela asked if the judges salary increases request had been presented to the Budget Committee. Judiciary Budget Committee Chairman Weschler said the judgeship increase would be part of the FY07 Unified Budget if the Judicial Compensation Commission supports the request.

Senator Carraro commented that if all employees get raises, then Metro Court judges would get two times the salary increase over other districts. Judge Nakamura responded that judges' salaries are a high priority to encourage judges to remain at Metro Court.

Senator Rawson said that by January he would like justification on the rational of the judges' pay scale.

Senator Rawson pointed out that the request was 90 percent performance measures. Senator Rawson encouraged the court to request a higher standard. Mr. Saavedra agreed that the courts should make the target higher and asserted that if the court has more cases and the same number of staff, it is more difficult to lower the cases disposed.

Senator Beffort asked about the educational requirements for a magistrate judge; Chief Judge Nakamura responded that a GED is required for a magistrate judge, while a Metro Court judge must have a law degree and at least three years of experience.

Human Services Department (630)

Daryl Schwebach, deputy secretary, Human Service Department, reviewed the FY07 budget request. It is a \$149.9 million, of which \$117.1 million is from the Temporary Assistance to Needy Families block grant. He said \$11.6 million of the general fund request is appropriated directly to HSD and \$21.2 million in general funds is appropriated to other agencies to certify the maintenance of effort. A total appropriation to HSD of \$128.7 million, of this \$69.2 million is for cash assistance, \$49.3 million is for Support Services, and the remaining \$10.2 million of this budget is used for administrative costs. This has decreased in the past few years, as the agency allocation has changed.

Mr. Schwebach addressed a few budget issues for FY06. For FY06 the department is asking the committee to consider a request for a revenue source change between the Income Support Division administrative budget and the cash assistance budget, with the net effect of zero. The department is requesting up to \$4 million from the general fund for cash assistance to substitute for \$4million of administration TANF money. This will allow the state to maximize the income support cost allocation without any additional appropriations while meeting the maintenance of effort. The department has determined it has approximately \$5 million carryover from the prior fiscal year and therefore the general fund contingency appropriation will not be used.

In response to Representative King's question on why the Commission on the Status of Women being transferred to the Office of Workforce Training and Development, Katie Falls, director, Income Support

Division, said the commission is a service provider and the department is trying to make all subcontractors part of the Workforce Investment Act service models.

In response to Representative King's question on how much is allotted for domestic violence, Ms. Falls said \$2.6 million is being administered by the Children, Youth and Families Department. In FY06, CYFD will be issuing a request for proposals for services.

FY04 General Fund Revenue Report and FY06 and FY07 Outlook; Use of Dynamic Scoring for Revenue Effects of Legislation

James Jimenez, secretary, Department of Finance and Administration, reviewed the economy:

- U.S. economic growth is strong: 3.4 percent in FY06 and 3 percent in FY07.
- Federal funds rate recently rose to 3.75 percent and Global Insight expects it to be 4.5 percent in 2006.
- Employment is up 2.1 percent and the Bureau of Business and Economic Research is forecasting employment to remain at 2.1 percent for the next few years.
- BBER has forecast strong personal income growth and expects it to decline after FY07.
- Consensus revenue estimate have forecast \$9.20/mcf in FY06 for natural gas, declining to \$7.50 in FY07 and to \$6 by FY10.
- Crude oil is estimated at a per-barrel price of \$571 in FY06 and \$53 in FY07.

Jan Goodwin, secretary, Taxation and Revenue Department, reviewed the revenues:

- Total recurring revenues are up 14.1 percent in FY05 to \$4.9 billion and are expected to grow 13.6 percent in FY06 and decline 3.4 percent in FY07.
- General sales tax receipts grew by 4.6 percent in FY05 and are expected to grow 6.6 percent in FY06. The taxable base before adjusting for food and medical grew at 8.0 percent, one of the strongest years ever.
- Personal income taxes grew by 6.9 percent even with the rate cuts effects. It is expected to grow by 1.8 percent in FY06 and decline in FY07 by 1.6 percent.
- Corporate income tax collections increased by over \$100 million to \$243 million in FY05. Strong growth is expected in FY06 as well.
- Mineral production taxes and rents and royalties came in 30 percent above FY04 and are expected to decline in FY07 and FY08.
- Investment income will increase substantially in FY06 due to federal funds rate being double what they were in FY05.

General fund summary

- Without the special session legislation, general fund balances are expected to be 15.1 percent of recurring appropriations in FY05 and 31.9 percent in FY06. The new money will be \$658.7 million.

In response to Chairman Varela, Mr. Jimenez indicated that they would work with the consensus group to develop a reasonable forecast of expenditures.

In response to Chairman Varela, Mr. Jimenez indicated that the personal income tax was still progressive and he did not know about the elasticity (the ratio of the change in personal income tax and personal

income) but suspected it went down with the tax cuts. Ms. Goodwin said that the expansion of the personal exemption restored progressivity lost by the rate cuts and took 100,000-200,000 low income people off the tax rolls.

Senator Carraro said that the oil and gas estimates were too conservative and asked about the substitution effect of high gas prices. Ms. Goodwin indicated that that has been taken into consideration in the forecast. Mr. Jimenez discussed risks to the oil and gas forecasts as well as how the consensus group developed them.

In response to Senator Smith, Mr. Jimenez reported that investment earnings were closely tied to the federal funds rate and that the rate is expected to be significantly higher in FY06 but then level off while state balances will decline.

Responding to a question from Chairman Varela, Dannette Burch of the Department of Finance and Administration explained how the reserve funds worked. When operating reserves reach 8 percent of total recurring appropriations, excess balances go into the tax stabilization fund. When balances in that fund reach 6 percent of total recurring appropriations, excess balances go to taxpayer dividend fund. The taxpayer dividend fund must be distributed to taxpayers according to a plan developed by the governor and the Legislature.

Mr. Jimenez reported that the severance tax bonding capacity was close to \$400 million and includes supplemental and senior STB capacity. David Abbey, LFC director, indicated that the LFC projection excludes supplemental and so is closer to \$200 million. Secretary Jimenez will send a letter documenting the severance tax bonding capacity.

Dynamic Scoring

Secretary Jimenez felt that the dynamic scoring project was useful but less than hoped. "We are still missing the ability to see how it will impact state reserves." If legislators want to continue, DFA will come back to the committee with funding requests that will include a half-time FTE and \$20 thousand for maintenance contract on REMI model.

Senator Beffort said that maybe someone from one of the universities should be involved.

Senator Carraro wanted to know how much it cost and Tom Clifford, chief economist of TRD, said that the cost was \$190 thousand and that the additional \$20 thousand would be for maintenance and technical assistance. Senator Carraro was concerned that the money was being wasted and sent out of the state when it could be spent here.

Funding for Nurse Education and Performance Results

Robert Behrendt, LFC auditor, presented the review report on "State Funding for Nurse Education and Outcomes." The objective of the review was to determine if additional funding for nursing help had narrowed the nursing gap. Mr. Behrendt discussed the result for two- and four-year nursing programs. He said two-year colleges must increase graduates by 109 percent and four-year colleges must increase graduates by 116 percent to meet the goal of 1,000 graduates by FY05. Mr. Behrendt said line-item funding might be eliminated by FY07 because student credit hours would be built into the formula.

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New Mexico efforts indicate a need to align health professional workforce efforts with Office of Workforce Training and Development; only four institutions requested capital outlay funds to help with infrastructure shortages; program evaluation and accountability are not considered.

Recommendations included

- Bring together all stakeholders to develop a statewide strategy
- Develop a uniform reporting system to track implementation
- Base future funding on performance
- Make nursing shortage a priority of Workforce Investment Act

Higher Education Department Secretary Designee Beverly McClure presented department responses and corrective action. The secretary stated that in general the department concurred with the report.

Representative Saavedra asked what funds were being presented in HED presentation, especially to the University of New Mexico. The representative's question raised concern regarding all the funding provided to institutions for nursing. The table presented by HED only identified special appropriations. Arley Williams, LFC fiscal analyst lead committee members to the Appendix B in the report which provides all funding to institutions for nursing- a total of about \$18 million has appropriated over the last five fiscal years.

Secretary McClure provided data on production versus demand and system capacity bottlenecks. The corrective action plan included

- Creating a nursing enhancement taskforce
- Coordinating efforts of all groups
- Improving articulation and transfer
- Capital improvement
- Developing performance measures
- Faculty recruitment and retention
- Capital outlay needed in FY06 \$5.2 and FY07 \$10 million

Representative Saavedra stated that institutions should have first thought of infrastructure needs before requesting funds for new programs. The representative asked if the University of New Mexico was on target. The dean of nursing from the University of New Mexico replied the program has increased capacity 79 percent. The dean of nursing from New Mexico State University stated that they increased admissions from 32 to 78 and used funds to increase faculty salaries. University of New Mexico dean of nursing reported their faculty salaries are at the 50th percentile compared with salaries nationwide.

Representative Sandoval asked which institutions had infrastructure shortages. Secretary McClure responded there was a lack of clinical space. The capital outlay recommendation is for allied health, which includes nurses but is not just for the nursing program. Allied health includes nursing, paramedic, radiology therapy, everything not included in the medical school.

New Mexico State University reported that 50 percent of New Mexico's nursing workforce comes from out of state.

Chairman Varela asked how we could put this issue in the context of best practices. Maybe the funding

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formula needs to be revisited to determine if some programs are under-funded. Formula funding generated by nursing program does not all go to the program. Chairman Varela believed that the creation of an executive department would have created more authority over local board of regents and is disappointed that it had no affect.

Christine Jacobus informed the committee that the Health Policy Commission had just issued their report as a result of Senate Joint Memorial 37, which required a study on the impact of nurse staffing and retention issues on workforce development. Copies were provided to the committee members.

Senator Smith Said the Legislature needs to look at the issue in a much broader scope rather than as splinter groups (salaries, capital outlay, and professional educators). The committee has to get serious about addressing the issue. Our current strategy is not adequately addressing the issue.

Chairman Varela asked what happens to the funding formula funds for nursing once the funds get to the institution. How can performance be evaluated. He requested that HED work with the staff to come up with a statewide strategic plan to address the issue. He requested that secretary begin to address the issues in the report for the November budget hearing.

Aging and Long-Term Services Department

Deborah Armstrong, Secretary, Aging and Long-Term Services Department, introduced staff and went through the agency handout:

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- Budget highlights are a \$57.3 million increase and indirect control of \$225 million from Medicaid.
- The department is requesting a base increase of \$1.1 million and expansion of \$996.4 thousand
- Aside from the budget request, ALTSD is putting request together now for separate legislation for the Aging Network.\

Ms. Armstrong reviewed the D&E Waiver Program Central Registry and Allocation as of Oct. 2005

- On central registry – 7,400
- Average wait time to get in services – 34 months
- Average served in one month – 2,081
- Attrition rate compared to new allocations per month – 41 attrition and 32 allocation
- Average cost per client projected for FY05 - \$1,965 per month

In response to Representative Moore's question about whether the Aging Network includes Senate Bill 190 items, Secretary Armstrong said no, it is rated as nonrecurring and will be in the Aging Network request.

In response to Senator Beffort, Secretary Armstrong said the D&E positions are frozen until October 2004.

In response to Senator Beffort's question as to when the special appropriation was available, Mr. Abbey said it was available in February 2004 and a spending plan adopted in October 2004.

Senator Beffort made a comment on the joint powers agreement, saying she was uncomfortable with the gradual transition of the joint powers agreement with CYFD. She asked why everything could not be

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moved from CYFD to make the Adult Protective Services program at ALTSD whole. Secretary Armstrong said all the staff and responsibility have transferred to ALTSD. Secretary Armstrong commented she would not turn down a bigger appropriation to transfer faster. Senator Beffort commented she would like to see a plan to expedite the transfer.

In response to Senator Carraro's question on who is responsible for nursing home investigations and the role of the Attorney General, Secretary Armstrong said the partners for joint protocol for investigation of abuse, exploitation and neglect in Long Term facilities are APS, ALTSD and the Health Department. The AG's office gets involved only with Medicaid fraud issues.

In response to Senator Carraro's question on how Medicaid cuts will affect ALTSD, Secretary Armstrong said no cuts are targeted specifically at long-term programs and will provide global cost-containment recommendations if cuts occur. The department is working with HSD to cost out how much will be needed per 100 client increase per Medicaid program and working on self-directed waiver to give clients more control over services for less.

In response to Representative Salazar's question on utilities and gas increases consideration in this request, Secretary Armstrong said increases were not considered because the budget request was submitted in September before rate increases.

Representative Salazar commented that the Aging Network program needs the funding because they travel a lot. Secretary Armstrong said the department submitted an informal request to the governor's office for an increase. It was not an official request, so there was not a copy for the Committee.

Miscellaneous Business

LFC Subcommittee A Report (attached). Representative Varela moved to adopt the report, Senator Altamirano seconded the motion, and it passed with no objection.

LFC Subcommittee B Report (attached). Representative Salazar moved to adopt the report, Representative Saavedra seconded the motion, and it passed with no objection.

Staff Report

State Personnel Office (378)

The FY07 budget request submitted by the State Personnel Office seeks a general fund increase of \$71 thousand or 1.8 percent. The request under funds the employee benefits area by about 32 percent. Sandra Perez, director, SPO, advised the committee that the Fraternal Order of Police will initiate collective bargaining negotiations for the Motor Transportation Officers in November 2005. The committee expressed concern regarding the lack of performance pay. Ms. Perez indicated that a new performance appraisal system was being pilot tested and once in place statewide would offer an opportunity for reconsideration of performance pay issues.

Staff Report

Public Defender Department (355)

The department's appropriation request and the LFC recommendation assume \$2 million in special appropriations in HB2 and SB190 to be recurring appropriations including funding of staff appropriated for new judgeships, contract attorney fees and other staff for critical programs. The department's request is a 14 percent increase without these appropriations and 10.2 percent with these items scored as recurring.

The committee would like to go on record as supporting these FY05 and FY06 special appropriations as recurring appropriations and would like for LFC staff to meet with DFA Secretary Jimenez to get answers to these lingering questions.

Chief Public Defender John Bigelow stated he is unable to responsibly begin spending these appropriations without knowing for sure that they will continue, especially as they concern contract attorney fees. In fairness to contract public defender attorneys, the department requested a 20percent increase for their fees in FY07.

Indian Affairs Department (609)

Progress is slow on the implementation of the Indian Education Act. They have only spent \$400 thousand of a \$4 million appropriation. Secretary Benny Shendo is aware that progress is not as good as they had hoped. He has directed his assistant secretary to ensure that education implementation does not fall behind.

Representative Varela adjourned the LFC meeting at 11:30 a.m.

Chairman

Date

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